

JUSTIN X. WANG (CSB #166183)  
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Attorney for Plaintiffs  
 Cong ZHI  
 Ye YUAN  
 Tianqi ZHI

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

Cong ZHI  
 Ye YUAN  
 Tianqi ZHI

Plaintiffs,

vs.

MICHAEL CHERTOFF, Secretary of the  
 Department of Homeland Security;  
 CONDOLEEZZA RICE, Secretary of State  
 JOSEPH P. MARTIN, Officer in Charge,  
 USCIS Beijing Office

Defendants.

**CV**

Case No.:

**08**

**2809**

**PLAINTIFF'S ORIGINAL  
 COMPLAINT FOR WRIT IN THE  
 NATURE OF MANDAMUS**

Plaintiffs Cong ZHI, Ye YUAN and Tianqi ZHI, by and through their undersigned attorney, sue Defendants and state as follows:

1. This action is brought against the Defendants to compel action on two Refugee Asylee Relative Petitions, or Form I-730, properly filed by Plaintiff Cong ZHI on behalf of Plaintiffs Ye YUAN and Tianqi ZHI. The applications remain within the jurisdiction of the Defendants, who have improperly withheld action on said applications to Plaintiffs' detriment.

**PARTIES**

2. Plaintiffs Cong ZHI, Ye YUAN and Tianqi ZHI are natives and citizens of the People's Republic of China. Plaintiff Cong ZHI's two Refugee Asylee Relative Petitions (Form I-730) on behalf of her son, Plaintiff Ye YUAN, and her daughter, Plaintiff Tianqi ZHI, were approved by

1 the U.S.C.I.S. (**Exhibit 1: Approval Notices of I-730**) on December 19, 2005.

2 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security  
3 (DHS), and this action is brought against him in his official capacity. He is generally charged  
4 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate  
5 such powers and authority to subordinate employees of the DHS. 8 U.S.C. §1103(a); 8 C.F.R. §  
6 2.1.

7 4. Defendant Condoleezza Rice is the Secretary of State, and this action is brought against  
8 her in her official capacity. She is generally charged with visa and travel documents issuance  
9 under the INA.

10 5. Defendant Joseph P. Martin is the Officer in Charge at USCIS' Beijing office and he is  
11 charged with the authority to adjudicate and make decisions on I-730 visa petitions once the USCIS  
12 Nebraska Service Center has approved the petition.

### 13 JURISDICTION

14 6 Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,  
15 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

### 16 VENUE

17 7. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action  
18 against officers and agencies of the United States in their official capacities, brought in the  
19 District where Plaintiff Cong ZHI resides if no real property is involved in the action. Specifically,  
20 Plaintiff Cong ZHI resides in Santa Rosa, California and no real property is involved in the instant  
21 action.

### 22 EXHAUSTION OF REMEDIES

23 8. Plaintiffs have exhausted their administrative remedies. Plaintiffs have made inquiries  
24 concerning the said I-730 Petitions, to no avail.

### 25 CAUSE OF ACTION

26 9. Plaintiff Cong ZHI's two Refugee Asylee Relative Petitions (Form I-730) on behalf of her  
27 son, Plaintiff Yuan YE, and her daughter, Plaintiff Tianqi ZHI, were approved by the U.S.C.I.S.  
28 (**Exhibit 1: Approval Notices of I-730**) on December 19, 2005.

10. Defendants have unreasonably delayed in completing Plaintiffs' I-730 Petitions and in issuing the travel documents for more than three years and three months from the date of their filing, thereby depriving them of the right to a decision on the petitions and the peace of mind to which Plaintiffs are entitled.

11. Plaintiffs have been damaged by the failure of Defendants to act in accord with their duties under the law.

(a) Plaintiffs have been damaged by simply being deprived of the adjudication of their Form I-730 petitions for more than three years and three months since their filing. Plaintiff Cong ZHI has been unable to reunite in the United States with her two children, who still remain in China (**Exhibit 2: Current Address and Phone Number in China**), due to the pendency of the travel documents to Plaintiffs Ye YUAN and Tianqi ZHI.

12. The Defendants, in violation Administrative Procedures Act and Mandamus Act, 5 USC §701 *et seq.* are unlawfully withholding or unreasonably delaying action on Plaintiffs' travel documents and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiffs' cases.

### PRAYER

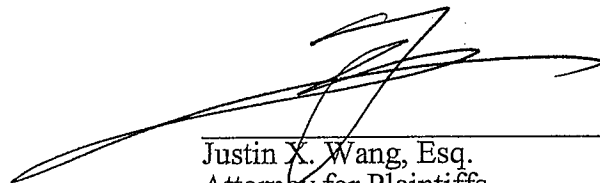
12. WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs respectfully pray that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring the defendants to complete the adjudication of Plaintiffs' two I-730s;
- (b) requiring further the defendants to issue travel documents expeditiously without further delay or in accordance with the Court ruling;
- (c) declaring the Plaintiffs as the prevailing party and awarding Plaintiffs reasonable attorney's fees under the Equal Access to Justice Act upon motion; and
- (d) granting such other relief at law and in equity as justice may require.

Dated: June 3, 2008

Respectfully submitted,

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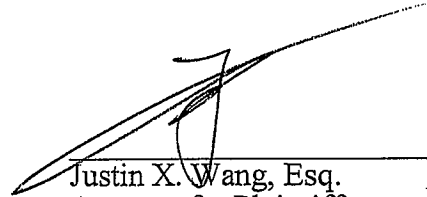
Justin X. Wang, Esq.  
Attorney for Plaintiffs

**CERTIFICATION OF INTERESTED ENTITIES OR PERSON**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: June 3, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Justin X. Wang', is written over a horizontal line.

Justin X. Wang, Esq.  
Attorney for Plaintiffs

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	Approval Notices of I-730
2	Current Address and Phone Number in China for Plaintiff Ye YUAN and Plaintiff Tianqi ZHI

Ex. 1



RECEIPT NUMBER LIN-05-108-55439		CASE TYPE I730 REFUGEE ASYLEE RELATIVE PETITION
RECEIPT DATE February 28, 2005	PRIORITY DATE	PETITIONER A077 707 440 ZHI, CONG
NOTICE DATE December 19, 2005	PAGE 1 of 1	
HENRY R. HU ESQ 520 S EL CAMINO REAL STE 510 SAN MATEO CA 94402		Notice Type: Approval Notice Class: ASY

Your Refugee/Asylee Relative Petition for the family member(s) listed on this notice has been approved in accordance with Section 208 of the Immigration and Nationality Act, and forwarded to the Department of State National Visa Center, 32 Rochester Ave., Portsmouth, NH 03801. This completes all DHS action on this petition.

The Department of State will notify the U.S. Embassy or Consulate abroad having jurisdiction over the area where your relative(s) resides. The consular post will contact your relative(s) regarding procedures to be followed for travel to the United States.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Family members:

Name	DOB	COB	Class	A Number
NONE			ASY	
YUAN YE	05/02/1983	CHINA, PEOPLE'S REPUBLIC OF	ASY	A079609986

Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER  
U.S. IMMIG. & NATZ. SERVICE  
P.O. BOX 82521  
LINCOLN NE 68501-2521  
Customer Service Telephone: 800-375-5283







RECEIPT NUMBER LIN-05-108-55447		CASE TYPE I730
RECEIPT DATE February 28, 2005		REFUGEE ASYLEE RELATIVE PETITION
PRIORITY DATE		PETITIONER A077 707 440
NOTICE DATE December 19, 2005		ZHT CONG
PAGE 1 of 1		

HENRY R. HU ESQ 520 S EL CAMINO REAL STE 510 SAN MATEO CA 94402	Notice Type: Approval Notice Class: ASY
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Your Refugee/Asylee Relative Petition for the family member(s) listed on this notice has been approved in accordance with Section 208 of the Immigration and Nationality Act, and forwarded to the Department of State National Visa Center, 3300 K Street, NW, Washington, DC 20541, for completion of this process on this petition.

The Department of State will notify the U.S. Embassy or Consulate abroad having jurisdiction over the area where your relative(s) resides. The consular post will contact your relative(s) regarding procedures to be followed for travel to the United States.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Family members:

Name	DOB	COB	Class	A Number
NONE			ASY	
ZHI, TIANQI	02/09/1989	CHINA, PEOPLE'S REPUBLIC OF	ASY	A679609385

Ex. 2

**Address in China for Plaintiff Ye YUAN and Tianqi ZHI**

中国辽宁省沈阳市  
铁西区保工北街 76 号 65 号楼 8-8  
邮编: 110026  
袁野先生、智天琪小姐

电话: 011-86-134-7828-6728  
011-86-133-3249-7651  
011-86-159-1074-9727